IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 19TH MARCH 2007 / 28TH PHALGUNA 1928

WP(C).No. 18907 of 2006(A)

PETITIONERS:

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1. DR.DAVID PUTHUKKADAN,
   S/O.P.D.THOMAS, PLOT NO.92,
   NEHRU NAGAR, OLLUR VILLAGE,
   THRISSUR.

2. DR.THOMAS PUTHOKKADAN,
   S/O.P.D.THOMAS, PLOT NO.92,
   NEHRU NAGAR, OLLUR VILLAGE, THRISSUR.

3. PAUL PAUTHUKKADAN,
   S/O.P.D.THOMAS, PLOT NO.92,
   NEHRU NAGAR, OLLUR VILLAGE, THRISSUR.

BY ADV. SRI.K.I.MAYANKUTTY MATHER
SMT.S.AMINA

RESPONDENTS:

1.THE CORPORATION OF TRICHUR,
  REP. BY ITS SECRETARY,
  TRICHUR.

2.THE SECRETARY,
  CORPORATION OF TRICHUR,
  TRICHUR.

3.GOVERNMENT OF KERALA,
  REP. BY THE SECRETARY,
  LOCAL ADMINISTRATION (G) DEPARTMENT,
  SECRETARIAT, THIRUVANANTHAPURAM.

4. THE SECRETARY,
   THRISSUR URBAN DEVELOPMENT AUTHORITY,
   THRISSUR.

5.THE CHIEF TOWN PLANNER,
THIRUVANANTHAPURAM.

R1-R2 BY ADV. SRI.K.P.VIJAYAN
SRI.V.M.SYAM KUMAR
SMT.C.B.SUMA DEVI
SMT.KRIPA ELIZABETH MATHEWS
R3 & R5 BY GOVT. PLEADER MR.K.J.MOHAMMED ANSAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE,J.

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W.P.(C)No. 18907 of 2006

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Dated: 19th March, 2007

JUDGMENT

Under Exts.P2 and P3, the application submitted by the petitioners for construction of a building on their property is rejected by the Corporation on the ground that the property of the petitioners is required for implementation of what is described as D.T.P.Scheme in Chettyangadi-Erattachira area. Relying on the observations of the judgment of the Full Bench of this court in paragraphs 18, 19 and 20 [**Francis v. Chalakudy Municipality** (1999(3) KLT 560)], the petitioners have incorporated paragraph 12 in the amended Writ Petition.

2. I have heard the submissions of Mr.K.I.Mayankutty Mather, counsel for the petitioners and Mr.K.P.Vijayan, Standing Counsel for the Thrissur Corporation.

3. Learned Standing Counsel for the Thrissur Corporation submits that the petitioners are not entitled to invoke the extra-ordinary jurisdiction of this court under Article 226 of the Constitution since they yet to exhaust their statutory remedy of appeal which they are having against Ext.P2. I am not impressed by the stand of the Corporation. The issue is covered not only by the Full Bench decision of this court in **Francis v. Chalakudy Municipality** (supra) but also

by the Division Bench judgment of this court in **Padmini v. State of Kerala** (1999(3) KLT 465). I had occasion to decide several cases involving identical issues and my attention was drawn by the counsel for the petitioners to the Division Bench judgment of this court in W.A.No.80 of 2007 wherein the Division Bench confirmed my own judgment in W.P.C.NO.28206 of 2006. I notice that the Supreme Court also in **Raju S.Jethmalani v. State of Maharashtra** [(2005) 11 S.C.C. 222) has decided the issue. The respondents are not entitled to freeze the property of the petitioners indefinitely on the ground that they want those properties for implementing the D.T.P.Scheme. No notification has so far been promulgated regarding any portion of the petitioners' property under Section 4 of the Land Acquisition Act. Even though counsel for the petitioners prays that Exts.P2 and P3 be quashed and the Corporation be directed to issue the building permit without any condition, I am not inclined to direct the Corporation to issue building permit unconditionally. Accordingly, the Writ Petition will stand allowed issuing the following directions:

Exts.P2 and P3 are quashed and one of the petitioners representing all the petitioners will submit an undertaking in the form of an affidavit before the Corporation undertaking clearly that in the event of a notification under Section 4(1) of the Land Acquisition Act

being promulgated for acquisition of any portion of their property within a period of one year from today, they will remove the constructions put up by them on the strength of the building permit issued pursuant to this judgment without raising any objections and without lodging any claim for compensation. Once Corporation receives such an affidavit filed by any one of the petitioners, the Corporation will pass orders on the permit application submitted by the petitioners and issue building permit provided the plan submitted is otherwise in order. In other words, the pendency of the D.T.P.Scheme and proposal to acquire the property for widening of the road will not be a ground for rejecting the application. It is made clear that fresh orders will be issued within three weeks of receiving the affidavit. It is further made clear that even after the period of one year mentioned in the affidavit, this judgment will not stand in the way of the Corporation acquiring the petitioners' property for any genuine public purpose. But under such an event, the Corporation will be bound to pay adequate compensation to the petitioners as per the provisions of the Land Acquisition Act.

srd **PIUS C.KURIAKOSE, JUDGE**